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WRITER'S DIRECT DIAL

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March 31, 1989

FEDERAL EXPRESS

Mr. Patrick Tobin
Director
Waste Management Division
Region IV
U.S. Environmental Protection Agency
345 Courtland Street
Atlanta, GA 30365

Re: Carrier Air Conditioning
Collierville, Tennessee

Dear Mr. Tobin:

This responds to your letter dated March 2, 1989, which we received about March 9, concerning the above-referenced site. Based on the language of your letter, and for reasons explained below, it appears that EPA has misunderstood what Carrier's offer was, and thus has not had an opportunity to consider this offer on its merits. (For your convenience, a copy of my January 20 letter is attached.)

This letter transmits Carrier's good faith proposal under the Resource Conservation and Recovery Act (RCRA) and/or the Safe Drinking Water Act (SDWA) to undertake necessary study and clean-up work at the Collierville site. Carrier does not submit an offer under CERCLA. Carrier believes that EPA is in substantial agreement with it as to the need for remedial work at the site; however, Carrier disagrees with EPA's legal approach to accomplish such work. We think that a meeting with you is the most promising way of resolving our disagreement about legal approaches in order to expedite our joint objective: an environmentally satisfactory remedy.

Richard Holland
TN. 901/424-9200

I. RCRA Issues.

Carrier has offered to undertake necessary clean-up action and study at the site pursuant to § 3008(a) of RCRA, not 3008(h). The difference is important. For the purpose of accomplishing remedial work at the site, Carrier is prepared to agree that the January 1985 release -- caused by an underground pipe rupture -- constituted disposal of TCE in violation of RCRA. As part of the settlement of an enforcement claim under § 3008(a), Carrier is prepared to agree to apply the substantive clean-up standards of RCRA corrective action. As we explained in our meeting with your staff and in my January 20, 1989 letter, we understand that Region III used this approach in the Culpeper Wood Preservers case and deferred CERCLA action.

get details from R3

The issue of Carrier's TSDF application and its subsequent withdrawal is simply not relevant to the proposal Carrier has made under § 3008(a). The discussion on page 2 of your letter incorrectly suggests that we are relying on § 3008(h) as the basis for Agency action. The Agency need not resolve the thorny issues of RCRA corrective action under § 3008(h) in order to obtain Carrier's agreement to remedy this site under § 3008(a).

II. Safe Drinking Water Act Issues.

Carrier's proposal under the Safe Drinking Water Act was apparently also misunderstood. Carrier's proposal noted that the January 1985 TCE loss fits the SDWA definition of underground injection from a Class V injection well. As such, EPA has a mandatory duty under 40 C.F.R. § 144.12(c)(2) of the regulations to take corrective action, as Region IX proposed doing in the Mistlin Honda case. (Copy attached.)

The assertion in your letter that Tennessee has primary enforcement authority under the SDWA may be correct for public water systems, but is not correct for the underground injection control (UIC) regulations. Carrier's proposal is based on the UIC rules. Under 40 C.F.R. § 147.2151, EPA not Tennessee, administers the UIC program for Tennessee, including clean-up under the UIC provisions. That rule, as amended in October 1988, provides that:

Type

> (a) Contents. The UIC program for the State of Tennessee, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements

Mistlin does not involve dirt + SMUs

this was initiated this way by gw folks, not waste folks

> of 40 C.F.R. Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

40 C.F.R. § 147.2151(a) (emphasis supplied). Thus EPA has the authority and the duty to remedy this site under the Safe Drinking Water Act. Moreover, SDWA standards are the groundwater cleanup standards under CERCLA. Thus the SDWA approach is the same in substance as that under CERCLA; however, it appears to be a faster method of remediating the site. Carrier is prepared to agree to such an arrangement, unlike the situation under CERCLA.

III. Public Participation.

Your letter also suggests that because EPA has proposed the site for the NPL all the public participation requirements of CERCLA must apply. Obviously, these requirements do not apply unless and until EPA decides in a final rule that the site should be listed. More important, nothing restricts Carrier and EPA from agreeing to appropriate public participation procedures in a consent order under RCRA or the SDWA. It is also unwarranted to assume in the absence of actual negotiations that Carrier is unwilling to agree to appropriate public participation procedures in a consent order under RCRA or the SDWA.

IV. Delay Caused By CERCLA.

EPA has suggested that use of CERCLA rather than other authority will not slow down remediation of this Site. We believe that the Agency's record at other CERCLA sites does not support this view. We are informed that EPA headquarters last year ordered that RI/FSs take no longer than 18 months, absent unusual circumstances. We believe delaying source control measures for the 18 months or longer necessary to conduct the standard RI/FS EPA's proposed order contemplates would be a serious mistake. We note that the order sent us by EPA fails to respond to any of the ample data and voluminous studies submitted by Carrier in December 1988. We will be submitting the back-up data for your staff's review shortly. Even though three months have elapsed since its submission of the studies, the proposed order fails to indicate data gaps to be closed. Rather the draft order appears to discard all such data and begin again, an approach which will greatly delay clean-up. We think the facts

Carrier is free to agree to shorter schedule — that's their control, not Agency's

WORK PLAN addresses data we can't pay what we'll accept til they say what they want to use it to prove!

demonstrate the unsuitability of CERCLA procedures to obtaining a prompt remedy at this site.

In our view, as reflected by our enclosed proposed order under RCRA and the SDWA, the emphasis should be on interim remedial measures which will eliminate the possibility of further contamination, not on a time-consuming effort to duplicate the extensive studies Carrier has already conducted. Carrier has already spent over $1,000,000 on studies and source control efforts. We do not believe that CERCLA procedures, developed primarily for multi-party abandoned sites, are well-suited to a site such as this one where a financially capable party is interested in expediting actual clean-up.

V. Carrier Proposal.

This letter transmits a draft order under RCRA and/or the SDWA to which Carrier is prepared to agree for the purpose of resolving this dispute and promptly remedying the site. Carrier is not willing to agree to an order under CERCLA. Our proposed order differs from that suggested by EPA in that Carrier proposes:

(1) Source control measures in the area of the lagoon and of the 1979 spill and the 1985 incident. Some of these measures will be operational by summer and Carrier proposes to have the rest of them operational as provided in the schedule in the order, depending on how soon we can reach agreement with EPA;

(2) Supplemental remedial investigatory work designed to fill identifiable data gaps in the work performed to date; and

(3) a feasibility investigation designed to identify the permanent remedy best suited to this site.

The substance of the proposal is to remedy the site sooner than EPA proposes or can accomplish under CERCLA, to resolve identifiable problems with data gaps, and to arrive at an appropriate long-run remedy. This proposal is serious and is advanced in the belief that Region IV's primary objective is cleaning up the environment. Obviously, if Carrier's RCRA and SDWA actual cleanup proves satisfactory to EPA under the terms of the order, then the CERCLA options will not need to be exercised.

In evaluating Carrier's good faith offer under RCRA and the SDWA, EPA should be aware that Carrier's response to your letter's eight inquiries are:

1. A statement of willingness by Carrier to conduct or finance the RI/FS which is consistent with EPA's RI/FS Guidance and draft consent decree and provides a sufficient basis for further negotiations;

Carrier is willing to conduct and/or finance interim remedial measures, a supplemental remedial investigation, and feasibility investigation consistent with RCRA and/or SDWA guidance, as more fully set forth in the attached proposed consent order.

2. A response to EPA's draft consent decree;

This letter and the proposed order constitute Carrier's response to EPA's draft consent decree.

3. A detailed work plan identifying how Carrier plans to proceed with the work outlined in the RI/FS Guidance;

A response on this point is premature until it is determined whether RCRA and/or the SDWA are the basis for Carrier's agreement to conduct the work at the site.

4. A demonstration of Carrier's technical capability to carry out the RI/FS including the identification of the firm(s) that may actually conduct the work or a description of the process you will use to select the firm(s);

Carrier proposes to continue to contract with En-Safe, the firm which prepared the October 18, 1988 report to Tennessee which was submitted to EPA in December. Carrier believes that En-Safe has done other work with which Region IV is familiar, and that Region IV is familiar with En-Safe's capabilities.

5. A demonstration of Carrier's capability to finance the RI/FS;

Carrier is a wholly-owned subsidiary of United Technologies Corporation (UTC), a Fortune 50 company; a copy of the UTC annual report is enclosed.

6. A statement of willingness by Carrier to reimburse EPA for past response costs and costs incurred in overseeing your conduct of the RI/FS;

Is Carrier implying it will NOT pay RCRA or SDWA oversite costs?

A response to this question is premature until it is determined whether RCRA and/or the SDWA are the basis for Carrier's agreement to conduct the work at the site.

7. The name, address, and phone number of the party who will represent Carrier in negotiations;

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(202) 457-5282 (Randle)

will be Carrier's outside representatives. In addition, Carrier will be represented by its Assistant General Counsel, Arthur W. Kanerviko, Jr., Esq., and by Messrs. Gerald Bailey (Director of Environmental and Health Services), and Jess Walrath (Manager of Environmental Assurance).

8. A description of Carrier's position on releases from liability and reopeners to liability.

A response to this question is premature until it is determined whether RCRA and/or the SDWA are the bases for Carrier's agreement to conduct the work at the site.

We look forward to your response and look forward to an early meeting with you.

Sincerely,

Russell V. Randle
Counsel to Carrier Corporation

RVR/tlc
Enclosure
cc: Felicia Barnett